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U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: JUN 1 6 2005
EAC 03 172 51148

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a postdoctoral research associate at Harvard University. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now Citizenship and Immigration Services (CIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

Counsel states that the petitioner "is a phenomenal scientist whose achievements have been reported by major trade publications in the world and whose results have been in widespread implementation [in] the work of others." Counsel states that *Chemical and Engineering News* reported that the petitioner's discovery of *trans*-$[Fe(CN)_4(CO)_2]^2$ "will have great impact on understanding the function of hydrogenase and the origin and evolution of life as well." Counsel further asserts that the German publication *Nachrichten aus der Chemie* "includes [the petitioner's] work as one of the greatest inorganic chemistry discoveries in 2001."

A one-paragraph "Science Concentrates" article from *Chemical and Engineering News* reads, in part:

> Chemists at the State University of New York, Stony Brook, report synthesis of trans-dicarbonyltetracyanoferrate(II) anion . . . which is only the third such mixed cyano carbonyl complex known. . . . Characterization of such complexes may enable understanding of existing iron- and nickel/iron-based hydrogenase enzymes and of complexes that may have played a role in the origin and evolution of life.

The article states that the two discoverers are "Inorganic chemistry [redacted] and the petitioner, who is identified as a "graduate student." The petitioner was the first author of the short paper that reported the synthesis of the compound. The wording of the piece does not support counsel's assertion that the article attributes "great impact" to the petitioner's work.

The record does not contain the German article named above, and therefore we cannot verify counsel's assertions regarding it. The assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The petitioner submits several witness letters. Counsel states that these witnesses are "world leading scientists in the field of chemistry, including [redacted] elected Member of U.S. National Academy of Sciences." [redacted] states:

> My knowledge of [the petitioner's] important research contributions to date, as well as my exceptionally high regard for his future projections [sic], derive from observation of his research work conducted at the State University of New York at Stony Brook and Harvard University. . . .

> Due to his exceptional achievements, I recruited [the petitioner] to my laboratory in June, 2002. The fact that he is chosen to work in my laboratory as a postdoctoral associate from a pool of more than 100 applicants worldwide indicates his excellence. His work in my laboratory is centered on the synthesis, structure, and chemical reactivity of compounds related to the catalytic centers of molybdenum- and tungsten-containing enzymes. . . . In his work here, [the petitioner] is making excellent progress.

Most of the remaining witnesses are on the faculties of SUNY-Stony Brook or Harvard. [redacted] identified above as the coauthor of the petitioner's article describing the discovery of *trans*-$[Fe(CN)_4(CO)_2]^2$, states that the petitioner "is a star scientist who has already made a prominent achievement." Referring to the petitioner's co-discovery (with Prof. Koch) of *trans*-$[Fe(CN)_4(CO)_2]^2$, [redacted]

> This groundbreaking work has significantly impacted the whole scientific community. His work was immediately highlighted by the *Chemistry and Engineer News* [sic], the Time magazine of Chemistry, which is sent every week to more than 150,000 members of the American Chemical Society. It predicted this fundamental discovery will have great impact on the understanding the function [sic] of hydrogenase and the origin and evolution of the life as well [sic].

Like counsel, [redacted] misstates the title of *Chemical and Engineering News* and, more importantly, mischaracterizes the content of the article. As we have already noted, the article contains no prediction of "great impact," only the assertion that the discovery *could possibly* yield useful information. Furthermore, there is no evidence that *Chemical and Engineering News* "highlighted" this discovery, unless we take "highlighted" to be a synonym for "published a story about," in which case everything in that publication has been "highlighted." There is no internal evidence that the publishers emphasized this one-paragraph report.

[redacted] states: "I have learned that [the petitioner's] work has been included as an exercise in the text book 'Chemistry, the Central Science, ninth Edition' by [redacted] which is the most widely used textbook in General Chemistry." The record contains an electronic mail message from Ohio State University [redacted] which reads in part:

[redacted]

> First, I hope that you and [redacted] have a marvelous holiday season. . . .
>
> I never congratulated you on your report of trans-[Fe(CN)4(CO)2]^2- earlier this year. What a really cool system! I thought you would be amused to know that I worked it into one of the exercises into [sic] the latest edition of our general chem textbook.

[redacted] does not mention the petitioner in his message. The record also includes a photocopied page from the textbook itself, which attributes the discovery to unnamed "chemists at SUNY-Stonybrook [sic]."

In a more general description of the petitioner's work, [redacted] states:

> [The petitioner] is a prominent young scientist who has achieved very highly in inorganic chemistry. He has made research breakthrough [sic] in the understanding of biological

> process [sic] of making hydrogen gas, which is considered the fuel of the future without pollution from the combustion since what only generates [sic] is pure water. However, the existing technology fails to generate hydrogen gas in a cheap, efficient way. In order to explore the process to generate hydrogen gas from water in biological system [sic], [the petitioner] studied the structure of the active center of the hydrogenase, and achieved amazing results in this field.

[redacted]states that the petitioner "has managed to discover an entire new series of iron compounds with cyanide and carbon monoxide. . . . His work has revolutionized the field." [redacted]ites no specific evidence to show the petitioner's lasting influence in the field. The petitioner has documented only one published article about his work, which does not describe the petitioner's work as revolutionary. We will not assume that a given discovery must be revolutionary to receive the privilege of coverage in *Chemical and Engineering News*.

The most independent witness appears to be [redacted]an associate professor at the University of California, Berkeley, who states that the petitioner has "made a demonstrable, appreciable impact on the whole scientific community." He continues:

> I do not know [the petitioner] personally, but I am familiar with his research work. [The petitioner's] research is to make model compounds to study the structure and reactivity of the active site of hydrogenase. Hydrogenase is a very important enzyme which catalyze the transform [sic] of water to hydrogen gas in biological system [sic]. There will be great impact on the life [sic] once chemists understand the mestery [sic] under this biological process. Inorganic chemists are particularly intersted [sic] in hydrogenase enzymes because there are metal atom [sic] in the active site of them [sic]. . . .
>
> Metal cyanide chemistry has a history about 300 years [sic]. It's surprising that [the petitioner] can discover novel fundamental compounds while all the cyanide chemistry has been extensively studied. This explains why his new discovery of new iron cyanide carbon monoxide compound [sic] was immediately highlighted by Chemical and Engineer News [sic]. As an expert in cyanide chemistry, I can say [his] finding is a milestone in the field.

Almost all of the witnesses misstate the title of *Chemical and Engineering News* as *Chemical and Engineer News*. The recurrence of this error, and other factors such as grammatical anomalies, suggest common authorship of the letters. By their signatures, the witnesses have endorsed these letters, but it is not clear that the choice of wording is their own. Those witnesses who correctly identify the title of the trade publication are also the least hyperbolic about the contents of the piece, generally stating that the article contained a "positive" appraisal of the petitioner's work.

The director denied the petition, stating that the evidence of record does not substantiate many of the material claims made on the petitioner's behalf. The director acknowledged the intrinsic merit of the petitioner's work, but stated "we are not persuaded that the benefit of his work would be national in scope, and [sic] that the national interest of the United States would be adversely affected if labor certification were required."

On appeal, counsel contests the director's finding regarding the national scope of the petitioner's work. We find that scientific research is generally national in scope, because these findings are routinely disseminated through publications and/or conference presentations. Also, given the universality of scientific principles, the

applicability of scientific findings is generally not confined to a specific geographical area. We therefore concur with counsel's assertion that the petitioner's work is national in scope.

Counsel maintains that the petitioner's "milestone work has been overwhelmingly recognized worldwide. In addition to frequent citation around the world, there have been independent review articles commenting favorably on [the petitioner's] work." The initial submission contained nothing to document these new claims. The director can hardly be faulted for failing to take into account evidence that the petitioner did not submit. Because the AAO can review cases *de novo* (*see Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)), we will consider, on appeal, this new evidence that the petitioner did not bring to the director's attention beforehand. We will regard the evidence on its own merits, rather than uncritically accepting counsel's comments regarding the importance or significance of that evidence.

Counsel repeats the claim that the German publication *Nachrichten aus der Chemie* featured the petitioner's work. Counsel asserts that the director "completely overlooked this evidence." The record, however, contains no evidence for the director to overlook. The petitioner never submitted the article, nor any documentary (as opposed to testimonial) evidence to confirm the existence of the article.

The petitioner submits an unattributed "Citation History," indicating that six of the petitioner's articles have been cited 69 times in the aggregate. Two articles are said to have been cited more than eight times, with the most-heavily cited article said to have 32 citations. This list amounts to a claim, rather than actual evidence of citation. The burden is on the petitioner to support this claim, and not on CIS or the AAO to individually verify each of the claimed citations. The petitioner submits documentation of only a handful of citations.

In a 2004 article from *Inorganic Chemistry*, German researchers note the work of [redacted] and co-workers," and discusses how the properties of the newly discovered compounds differ from experimental predictions. A 2002 article from the same journal, by researchers at the University of Illinois, credits the petitioner and Prof. [redacted] with the initial description of $[Fe(CN)_3(CO)_3]^-$. Neither of the articles represent the petitioner's work as having "revolutionized" inorganic chemistry. The petitioner's work appears among ten citations appearing in a single paragraph of the textbook *Comprehensive Coordination Chemistry II*, published in 2004. An excerpt from the table of contents shows dozens of subspecialties in the study of iron, including carbonyl cyanides (where the petitioner's work is mentioned). A second textbook, *Advances in Inorganic Chemistry*, reproduces exactly the same passage in a section entitled "Ligand Substitution Reactions." The passage describes numerous compounds and reactions, with no indication whatsoever that the compound described by the petitioner is of greater interest than the others.

Counsel repeats the earlier assertion that [redacted] is a member of the prestigious National Academy of Sciences. Counsel is correct that this membership establishes [redacted] as a leader in his field, and his assertions merit consideration in that light. At the same time, such assertions form only part of the record. Other materials also require consideration. Also, we cannot ignore that [redacted] is the petitioner's immediate supervisor. While it is certainly an achievement to secure a postdoctoral position with a top scientist at a prestigious university, this is not *prima facie* evidence of eligibility for the national interest waiver. From the construction of the statute, it is clear that exceptional ability in the sciences does not, by itself, warrant a waiver; aliens of exceptional ability in the sciences are, by law, generally subject to the job offer/labor certification requirement.

The initial appellate submission includes one new witness letter. Boston University [redacted] states that the petitioner's "studies relating to hydrogenase enzymes will further the greater effort toward the application of hydrogen gas as a clean energy source, which is of crucial importance for the

economy and environment of the United States." While the development of hydrogen-fuel technology is in the national interest, it does not follow that every alien who engages in such research qualifies for a waiver. *See Matter of New York State Dept. of Transportation* at 215.

[redacted] states that the petitioner's work was "reported by *Chemical and Engineering News*. . . . In the news article, the author predicted that the newly discovered compound will have great impact on energy production and the environment as well." This assertion is simply not true. The *Chemical and Engineering News* article, which is only three sentences long and which we have quoted almost in full elsewhere in this decision, says nothing at all about energy production or the environment.[1] The reference to "great impact" owes more to previous letters, and counsel's introductory statement, than to anything in the article itself. [redacted]rong's extremely inaccurate description of the *Chemical and Engineering News* article continues a disturbing pattern that is found throughout the witness letters in this petition up to the filing of the appeal.

In a supplement to the appeal, the petitioner has submitted three additional letters from professors at various universities, discussing the petitioner's work with hydrogenase enzymes in [redacted]aboratory. It remains that the petitioner has le[redacted]aboratory, and is now pursuing work apparently unrelated to hydrogenases and hydrogen fuel. Regarding the petitioner's present work, the letters offer little more than general praise for the petitioner's progress as a researcher and the assertion that it is difficult to get a postdoctoral position in so prestigious a laboratory. The newly submitted letters do not overcome the serious questions arising from the anomalies in the earlier submissions, as discussed above.

Because of the questions arising from the witness letters, we are especially aware of the general lack of objective documentary evidence to support key claims in this petition. With so many inaccurate statements, for instance, about the *Chemical and Engineering News* article, we cannot take at face value anything that the petitioner or the witnesses say about the article that purportedly appeared in *Nachrichten aus der Chemie*. In the areas where the claims and evidence overlap, the claims are exaggerated or distorted. Section 204(b) of the Act, 8 U.S.C. § 1154(b), permits approval of an immigrant petition only if the facts stated in that petition are found to be true. The exaggerations and inaccuracies documented in this decision prevent us from finding that all of the factual claims set forth in this petition are true.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.

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[1] It is conceivable that [redacted] may be referring to a different article in the same publication, but the record does not contain any article that matches the description offered.